

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby proposes to amend Chapter 14, “School Health Services,” and Chapter 41, “Special Education,” Iowa Administrative Code.

This Notice proposes the following changes:

- Items 1 and 2 adopt rules on school health and medication administration. The content of the rules is currently in the special education chapter (Chapter 41) but is being moved to the school health chapter (Chapter 14) to make clear that these provisions apply to all students, not just students with disabilities. The rules also modernize technical language to account for current standards of nursing practice.
- Item 3 rescinds the rule that defines “highly qualified special education teachers” because the Every Student Succeeds Act (ESSA) repealed this federal requirement.
- Item 4 rescinds the rule that defines “scientifically based research” because ESSA repealed this language.
- Item 5 amends rule 281—41.156(256B,34CFR300) to account for the repeal of the federal “highly qualified” requirement.
- Items 6, 7, 8, and 9 contain amendments to account for recent federal special education regulations on local maintenance of fiscal effort. Unlike in other states, maintenance of effort is not a contentious issue in Iowa. Each Iowa district has maintained effort for all years at issue.
- Items 10, 11, 12, and 13 rescind from Chapter 41 rule language on school health that is being relocated to Chapter 14.
- Item 14 adds to rule 281—41.412(256B,34CFR300) language about additional permissive sources of funds for purchase or lease of special transportation expenses, as well as clarifies how purchased equipment is depreciated.
- Items 15 and 16 are amendments required by a recent federal rule making to address significant disproportionality in special education. Iowa’s method of calculating significant disproportionality is nearly identical to the mandatory minimum method for calculating significant disproportionality, and any practice change will be minor or technical.
- Items 17 and 18 provide more discretion to the parties regarding document disclosure in mediation conferences and due process hearings. These amendments will eliminate document disclosures that are not requested by any party.
- Item 19 eliminates a paragraph which provides that a child’s due process complaint becomes moot when the child moves from the district. This rule is inconsistent with federal special education law.
- Item 20 provides a time frame for the Iowa Department of Education to certify the administrative record from a due process hearing when a party requests judicial review in state or federal district court.

An agencywide waiver provision is provided in 281—Chapter 4.

Interested individuals may make written comments on the proposed amendments until June 27, 2017, at 4:30 p.m. Comments on the proposed amendments should be directed to Thomas Mayes, Iowa Department of Education, Third Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)242-5614; e-mail thomas.mayes@iowa.gov; or fax (515)242-5988.

A public hearing will be held on June 27, 2017, from 10 to 11 a.m. in the State Board Room, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Education and advise of specific needs by calling (515)281-5295.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 256 and 256B, the Individuals with Disabilities Education Act, and the Elementary and Secondary Education Act, as amended.

The following amendments are proposed.

ITEM 1. Adopt the following new rule 281—14.1(256):

281—14.1(256) Medication administration. Each school district, area education agency, and school shall establish medication administration policy and procedures, which include the following:

14.1(1) A statement on administration of prescription and nonprescription medication.

14.1(2) A statement on an individual health plan pursuant to rule 281—14.2(256) when administration requires ongoing professional health judgment.

14.1(3) A statement that persons administering medication shall include authorized practitioners, such as licensed registered nurses and physicians, and persons to whom authorized practitioners have delegated the administration of prescription and nonprescription drugs (who shall have successfully completed a medication administration course). Individuals who have demonstrated competency in administering their own medications may self-administer their medication. Individuals shall self-administer asthma or other airway constricting disease medication with parent and physician consent on file, without the necessity of demonstrating competency to self-administer these medications.

14.1(4) A provision for a medication administration course provided by the department that is completed every five years with an annual medication administration procedural skills check completed with a registered nurse or pharmacist. A registered nurse or licensed pharmacist shall conduct the course. A record of course completion shall be maintained by the school.

14.1(5) A requirement that the individual's parent provide a signed and dated written statement requesting medication administration at school.

14.1(6) A statement that medication shall be in the original labeled container either as dispensed or in the manufacturer's container.

14.1(7) A requirement that a written medication administration record shall be on file at the school and shall include:

- a.* Date.
- b.* Individual's name.
- c.* Prescriber or person authorizing administration.
- d.* Medication.
- e.* Medication dosage.
- f.* Administration time.
- g.* Administration method.
- h.* Signature and title of the person administering medication.
- i.* Any unusual circumstances, actions or omissions.

14.1(8) A statement that medication shall be stored in a secured area unless an alternate provision is documented.

14.1(9) A requirement for a written statement by the individual's parent or guardian requesting the individual's co-administration of medication, when competency is demonstrated.

14.1(10) A requirement for emergency protocols for medication-related reactions.

14.1(11) A statement regarding confidentiality of information.

ITEM 2. Adopt the following new rule 281—14.2(256):

281—14.2(256) Special health services. Some individuals need special health services to participate in an educational program. These individuals shall receive special health services along with their educational program.

14.2(1) Definitions. The following definitions shall be used in this rule, unless the context otherwise requires:

“Assignment and delegation” occurs when licensed health personnel, in collaboration with the education team, determine the special health services to be provided and the qualifications of individuals performing the health services. Primary consideration is given to the recommendation of the licensed health personnel. Each designation considers the individual’s special health service. The rationale for the designation is documented.

“Co-administration” is the eligible individual’s participation in the planning, management and implementation of the individual’s special health service and demonstration of proficiency to licensed health personnel.

“Educational program” includes all school curricular programs and activities both on and off school grounds.

“Education team” may include the individual, the individual’s parent, administrator, teacher, licensed health personnel, and others involved in the individual’s educational program. The education team may be the team required by the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973 if the child is eligible under either of those statutes.

“Health assessment” is health data collection, observation, analysis, and interpretation relating to the individual’s educational program.

“Health instruction” is education by licensed health personnel to prepare qualified designated personnel to deliver and perform special health services contained in the eligible individual’s health plan. Documentation of education and periodic updates shall be on file at school.

“Individual health plan” is the confidential, written, preplanned and ongoing special health service in the educational program. It includes assessment, nursing diagnosis, outcomes, planning, interventions, evaluation, student goals, if applicable, and a plan for emergencies to provide direction in managing an individual’s health needs. The plan is updated as needed and at least annually. Licensed health personnel develop this written plan with collaboration from the parent or guardian, individual’s health care provider or education team.

“Licensed health personnel” means a licensed registered nurse, licensed physician, or other licensed health personnel legally authorized to provide special health services and medications.

“Prescriber” means licensed health personnel legally authorized to prescribe special health services and medications.

“Qualified designated personnel” means a person instructed, supervised, and competent in implementing the eligible individual’s health plan.

“Special health services” includes, but is not limited to, services for eligible individuals whose health status (stable or unstable) requires:

1. Interpretation or intervention,
2. Administration of health procedures and health care, or
3. Use of a health device to compensate for the reduction or loss of a body function.

“Supervision” is the assessment, delegation, monitoring, and frequency of evaluation and documentation of special health services by licensed health personnel. Levels of supervision include situations in which:

1. Licensed health personnel are physically present.
2. Licensed health personnel are available at the same site.
3. Licensed health personnel are available on call.

14.2(2) Special health services policy. Each board of a public school or the authorities in charge of an accredited nonpublic school shall, in consultation with licensed health personnel, establish policy and

guidelines for the provision of confidential special health services in conformity with this chapter. Such policy and guidelines shall address the following:

a. Licensed health personnel shall provide special health services under the auspices of the school.

Duties of the licensed health personnel include:

- (1) Participating as a member of the education team.
- (2) Providing the health assessment.
- (3) Planning, implementing and evaluating the written individual health plan.
- (4) Planning, implementing and evaluating special emergency health services.
- (5) Serving as a liaison and encouraging participation and communication with health service agencies and individuals providing health care.
- (6) Providing health consultation, counseling and instruction with the eligible individual, the individual's parent and the staff in cooperation and conjunction with the prescriber.
- (7) Maintaining a record of special health services. The documentation shall include the eligible individual's name, special health service, prescriber or person authorizing, date and time, signature and title of the person providing the special health service and any unusual circumstances in the provision of such services.
- (8) Reporting unusual circumstances to the parent, school administration, and prescriber.
- (9) Assigning and delegating to, instructing, providing technical assistance to and supervising qualified designated personnel.
- (10) Updating knowledge and skills to meet special health service needs.

b. Prior to the provision of special health services, the following shall be on file:

- (1) A written statement by the prescriber detailing the specific method and schedule of the special health service, when indicated.
- (2) A written statement by the individual's parent requesting the provision of the special health service.
- (3) A written report of the preplanning staffing or meeting of the education team.
- (4) A written individual health plan available in the health record and integrated into the IEP or 504 plan, if applicable.

c. Licensed health personnel, in collaboration with the education team, shall determine the special health services to be provided and the qualifications of the individuals performing the special health services. The documented rationale shall include the following:

- (1) Analysis and interpretation of the special health service needs, health status stability, complexity of the service, predictability of the service outcome and risk of improperly performed service.
- (2) Determination that the special health service, task, procedure or function is part of the person's job description.
- (3) Determination of the assignment and delegation based on the individual's needs and qualifications of school personnel performing health services.
- (4) Review of the designated person's competency.
- (5) Determination of initial and ongoing level of supervision, monitoring and evaluation required for safe, quality services.

d. Licensed health personnel shall supervise the special health services, define the level of frequency of supervision and document the supervision.

e. Licensed health personnel shall instruct qualified designated personnel to deliver and perform special health services contained in the individual health plan. Documentation of instruction, written consent of personnel as required in Iowa Code section 280.23 and periodic updates shall be on file at the school.

f. Parents shall provide the usual equipment, supplies and necessary maintenance of the equipment. The equipment shall be stored in a secure area. The personnel responsible for the equipment shall be designated in the individual health plan. The individual health plan shall designate the role of the school, parents and others in the provision, supply, storage and maintenance of necessary equipment.

14.2(3) *Relationship between this rule and other laws and rules.* In complying with this rule, for children who are eligible under the Individuals with Disabilities Education Act and 281—Chapter 41 or

Section 504 of the Rehabilitation Act of 1973, the school health services must comply with any additional requirements imposed by those laws based on a specific child's needs.

ITEM 3. Rescind and reserve rule **281—41.18(256B,34CFR300)**.

ITEM 4. Rescind and reserve rule **281—41.35(34CFR300)**.

ITEM 5. Amend rule 281—41.156(256B,34CFR300) as follows:

281—41.156(256B,34CFR300) Personnel qualifications.

41.156(1) General. The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of Part B of the Act and of this chapter are appropriately and adequately prepared, ~~and trained, and licensed,~~ including ensuring that those personnel have the content knowledge and skills to serve children with disabilities.

41.156(2) Related services personnel and paraprofessionals. The qualifications under subrule 41.156(1) must include qualifications for related services personnel and paraprofessionals that:

a. Are consistent with any state-approved or state-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and

b. Ensure that related services personnel who deliver services in their discipline or profession:

(1) Meet the requirements of 41.156(2)“*a*”; and

(2) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(3) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with state law, regulation, or written policy, in meeting the requirements of this chapter to be used to assist in the provision of special education and related services under this chapter to children with disabilities.

41.156(3) Qualifications for special education teachers. The qualifications described in subrule 41.156(1) must ensure that each person employed as a public school special education teacher in the state who teaches in an elementary school, middle school, or secondary school ~~is highly qualified as a special education teacher by the deadline established in Section 1119(a)(2) of the ESEA.~~ meets the following standards:

a. The teacher has obtained full state certification as a special education teacher, including certification obtained through alternative routes to certification, or has passed the state special education teacher licensing examination and holds a license to teach in the state as a special education teacher, except that a teacher teaching in a public charter school must meet the certification or licensing requirements, if any, set forth in the state's public charter school law;

b. The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

c. The teacher holds at least a bachelor's degree.

41.156(4) Policy. In implementing this rule, the state must adopt a policy that includes a requirement that AEAs and LEAs in the state take measurable steps to recruit, hire, train, and retain ~~highly qualified~~ personnel described in this rule to provide special education and related services under Part B of the Act and this chapter to children with disabilities.

41.156(5) Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under this chapter, nothing in this chapter shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular SEA, AEA, or LEA employee to ~~be highly qualified~~ meet the requirements of this rule, or to prevent a parent from filing a complaint about staff qualifications with the SEA as provided for under this chapter.

41.156(6) Positive efforts to employ and advance qualified individuals with disabilities. Each recipient of assistance under Part B of the Act must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the Act.

41.156(7) Additional rules of construction.

a. A special educator teaching in one or more core academic subjects must be appropriately licensed in each core academic subject or must collaborate with an appropriately licensed teacher.

b. A teacher will be considered to meet the standard in subrule 41.156(3) if that teacher is participating in an alternative route to special education certification program as follows:

(1) The teacher meets the following requirements:

1. Before and while teaching, receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction;

2. Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or in a teacher mentoring program;

3. Assumes functions as a teacher only for a specified period of time not to exceed three years; and

4. Demonstrates satisfactory progress toward full certification as prescribed by the state; and

(2) The state ensures, through its certification and licensure process, that the provisions in subparagraph 41.156(7) “b”(1) are met.

ITEM 6. Rescind rule 281—41.203(256B,34CFR300) and adopt the following **new** rule in lieu thereof:

281—41.203(256B,34CFR300) Maintenance of effort.

41.203(1) Eligibility standard.

a. For purposes of establishing the LEA’s eligibility for an award for a fiscal year, the SEA must determine that the LEA budgets, for the education of children with disabilities, at least the same amount, from at least one of the following sources, as the LEA spent for that purpose from the same source for the most recent fiscal year for which information is available:

(1) Local funds only;

(2) The combination of state and local funds;

(3) Local funds only on a per capita basis; or

(4) The combination of state and local funds on a per capita basis.

b. When determining the amount of funds that the LEA must budget to meet the requirement in paragraph 41.203(1) “a,” the LEA may take into consideration, to the extent the information is available, the exceptions and adjustment provided in rules 281—41.204(256B,34CFR300) and 281—41.205(256B,34CFR300) that the LEA:

(1) Took in the intervening year or years between the most recent fiscal year for which information is available and the fiscal year for which the LEA is budgeting; and

(2) Reasonably expects to take in the fiscal year for which the LEA is budgeting.

c. Expenditures made from funds provided by the federal government for which the SEA is required to account to the federal government or for which the LEA is required to account to the federal government directly or through the SEA may not be considered in determining whether an LEA meets the standard in paragraph 41.203(1) “a.”

41.203(2) Compliance standard.

a. Except as provided in rules 281—41.204(256B,34CFR300) and 281—41.205(256B,34CFR300), funds provided to an LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

b. An LEA meets this standard if it does not reduce the level of expenditures for the education of children with disabilities made by the LEA from at least one of the following sources below the level of those expenditures from the same source for the preceding fiscal year, except as provided in rules 281—41.204(256B,34CFR300) and 281—41.205(256B,34CFR300):

(1) Local funds only;

(2) The combination of state and local funds;

(3) Local funds only on a per capita basis; or

(4) The combination of state and local funds on a per capita basis.

c. Expenditures made from funds provided by the federal government for which the SEA is required to account to the federal government or for which the LEA is required to account to the federal government directly or through the SEA may not be considered in determining whether an LEA meets the standard in paragraphs 41.203(2)“a” and 41.203(2)“b.”

41.203(3) Subsequent years.

a. If, in the fiscal year beginning on July 1, 2013, or July 1, 2014, an LEA fails to meet the requirements of 34 CFR 300.203 and rule 281—41.203(256B,34CFR300) in effect at that time, the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required in the absence of that failure, not the LEA’s reduced level of expenditures.

b. If, in any fiscal year beginning on or after July 1, 2015, an LEA fails to meet the requirement of subparagraph 41.203(2)“b”(1) or 41.203(2)“b”(3) and the LEA is relying on local funds only, or local funds only on a per capita basis, to meet the requirements of subrule 41.203(1) or 41.203(2), the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required under subparagraph 41.203(2)“b”(1) or 41.203(2)“b”(3) in the absence of that failure, not the LEA’s reduced level of expenditures.

c. If, in any fiscal year beginning on or after July 1, 2015, an LEA fails to meet the requirement of subparagraph 41.203(2)“b”(2) or 41.203(2)“b”(4) and the LEA is relying on the combination of state and local funds, or the combination of state and local funds on a per capita basis, to meet the requirements of subrule 41.203(1) or 41.203(2), the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required under subparagraph 41.203(2)“b”(2) or 41.203(2)“b”(4) in the absence of that failure, not the LEA’s reduced level of expenditures.

41.203(4) Consequence of failure to maintain effort. If an LEA fails to maintain its level of expenditures for the education of children with disabilities in accordance with subrule 41.203(2), the SEA is liable in a recovery action under Section 452 of the General Education Provisions Act (20 U.S.C. 1234a) to return to the U.S. Department of Education, using nonfederal funds, an amount equal to the amount by which the LEA failed to maintain its level of expenditures in accordance with subrule 41.203(2) in that fiscal year, or the amount of the LEA’s Part B subgrant in that fiscal year, whichever is lower.

ITEM 7. Amend rule 281—41.204(256B,34CFR300), introductory paragraph, as follows:

281—41.204(256B,34CFR300) Exception to maintenance of effort. Notwithstanding the restriction in subrule ~~41.203(1)~~ 41.203(2), an AEA or LEA may reduce the level of expenditures by the AEA or LEA under Part B of the Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:

ITEM 8. Amend subrule 41.205(1) as follows:

41.205(1) Amounts in excess. Notwithstanding 41.202(1)“b,” 41.202(2), and ~~41.203(1)~~ 41.203(2), and except as provided in 41.205(4) and 34 CFR 300.230(e)(2), for any fiscal year for which the allocation received by an LEA under rule 281—41.705(256B,34CFR300) exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by subrule ~~41.203(1)~~ 41.203(2) by not more than 50 percent of the amount of that excess.

ITEM 9. Amend subrule 41.208(1), introductory paragraph, as follows:

41.208(1) Uses. Notwithstanding rule 281—41.202(256B,34CFR300) and subrules ~~41.203(1)~~ 41.203(2) and 41.162(2), funds provided to an LEA under Part B of the Act may be used for the following activities:

ITEM 10. Rescind and reserve paragraphs **41.404(1)**“f” and “g.”

ITEM 11. Rescind and reserve paragraphs **41.404(2)**“d” and “e.”

ITEM 12. Rescind and reserve subrule **41.404(3)**.

ITEM 13. Rescind and reserve rule **281—41.405(256B)**.

ITEM 14. Amend subrules 41.412(3) and 41.412(4) as follows:

41.412(3) *Purchase of transportation equipment.* When it is necessary for an LEA to purchase equipment to transport eligible individuals to special education instructional services, this equipment shall be purchased from the LEA’s general fund, the physical plant and equipment levy (PEEL) fund, or the secure an advanced vision for education (SAVE) fund, if appropriate. The direct purchase of transportation equipment is not an appropriate expenditure of special education instructional funds generated through the weighting plan. A written schedule of depreciation for this transportation equipment shall be developed by the LEA, using the method specified in Iowa Code section 285.1(12). An annual charge to special education instructional funds generated through the weighting plan for depreciation of the equipment shall be made and reported as a special education transportation cost in the LEA Certified Annual Report if the equipment was purchased from the general fund. If the transportation equipment was purchased using funds from the PEEL fund or SAVE fund, that purchase is not reported as a cost from special education funds generated through the weighting plan. Annual depreciation charges, ~~except in unusual circumstances,~~ on transportation equipment purchased with funds from the PEEL fund or SAVE fund shall be calculated by the LEA according to the directions provided with the Annual Transportation Report and adjusted to reflect the proportion of special education mileage to the total annual mileage.

41.412(4) *Lease of transportation equipment.* An LEA may elect to lease equipment to transport eligible individuals to special education instructional services, in which case the lease cost would be an expenditure from the PEEL fund or the SAVE fund, if appropriate. Cost of the lease, or that portion of the lease attributable to special education transportation expense, shall not be considered a special education transportation cost and shall not be reported in the LEA Certified Annual Report.

ITEM 15. Amend rule 281—41.646(256B,34CFR300) as follows:

281—41.646(256B,34CFR300) Disproportionality.

41.646(1) *General.* The Using the methodology required by rule 281—41.647(256B,34CFR300), the state shall collect and examine data to determine if significant disproportionality based on race and ethnicity is occurring in the state and the LEAs of the state with respect to the following:

a. The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in Section 602(3) of the Act;

b. The placement in particular educational settings of these children; and

c. The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

41.646(2) *Review and revision of policies, practices, and procedures.* In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, or the incidence, duration, and type of disciplinary actions, in accordance with subrule 41.646(1) and rule 281—41.647(256B,34CFR300), the state must proceed as follows:

a. Provide for the annual review and, if appropriate, revision of the policies, procedures, and practices used in the identification, ~~or placement, or disciplinary actions~~ to ensure that the policies, procedures, and practices comply with the requirements of the Act; and

b. ~~Require any LEA identified under subrule 41.646(1) to reserve the maximum amount of funds under rule 281—41.226(256B,34CFR300) to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified under subrule 41.646(1); and~~

e. b. Require the LEA to publicly report on the revision of policies, practices, and procedures described under 41.646(2) “a.” in a manner consistent with the requirements of the Family Educational Rights and Privacy Act, its implementing regulations in 34 CFR Part 99, and Section 618(b)(1) of the Act.

41.646(3) Comprehensive coordinated early intervening services. Except as provided in subrule 41.646(4), any LEA identified under subrule 41.646(1) shall reserve the maximum amount of funds under Section 613(f) of the Act to provide comprehensive coordinated early intervening services to address factors contributing to the significant disproportionality.

a. In implementing comprehensive coordinated early intervening services an LEA:

(1) May carry out activities that include professional development and educational and behavioral evaluations, services, and supports.

(2) Must identify and address the factors contributing to the significant disproportionality, which may include, among other identified factors, a lack of access to scientifically based instruction; economic, cultural, or linguistic barriers to appropriate identification or placement in particular educational settings; inappropriate use of disciplinary removals; lack of access to appropriate diagnostic screenings; differences in academic achievement levels; and policies, practices, or procedures that contribute to the significant disproportionality.

(3) Must address a policy, practice, or procedure it identifies as contributing to the significant disproportionality, including a policy, practice or procedure that results in a failure to identify, or the inappropriate identification of, a racial or ethnic group (or groups).

b. An LEA may use funds reserved for comprehensive coordinated early intervening services to serve children from age 3 through grade 12, particularly, but not exclusively, children in those groups that were significantly over identified under subrule 41.646(1), including:

(1) Children who are not currently identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment; and

(2) Children with disabilities.

c. An LEA may not limit the provision of comprehensive coordinated early intervening services under this subrule to children with disabilities.

41.646(4) Exception to comprehensive coordinated early intervening services. The state shall not require any LEA that serves only children with disabilities identified under subrule 41.646(1) to reserve funds to provide comprehensive coordinated early intervening services.

41.646(5) Rule of construction. Nothing in this rule authorizes the state or an LEA to develop or implement policies, practices, or procedures that result in actions that violate the requirements of this chapter, including requirements related to child find and ensuring that a free appropriate public education is available to all eligible children with disabilities.

ITEM 16. Adopt the following **new** rule 281—41.647(256B,34CFR300):

281—41.647(256B,34CFR300) Determining significant disproportionality.

41.647(1) Definitions.

“*Alternate risk ratio*” is a calculation performed by dividing the risk of a particular outcome for children in one racial or ethnic group within an LEA by the risk of that outcome for children in all other racial or ethnic groups in the state.

“*Comparison group*” consists of the children in all other racial or ethnic groups within an LEA or within the state, when reviewing a particular racial or ethnic group within an LEA for significant disproportionality.

“*Minimum cell size*” is the minimum number of children experiencing a particular outcome, to be used as the numerator when calculating either the risk for a particular racial or ethnic group or the risk for children in all other racial or ethnic groups.

“*Minimum n-size*” is the minimum number of children enrolled in an LEA with respect to identification, and the minimum number of children with disabilities enrolled in an LEA with respect to

placement and discipline, to be used as the denominator when calculating either the risk for a particular racial or ethnic group or the risk for children in all other racial or ethnic groups.

“*Risk*” is the likelihood of a particular outcome (identification, placement, or disciplinary removal) for a specified racial or ethnic group (or groups), calculated by dividing the number of children from a specified racial or ethnic group (or groups) experiencing that outcome by the total number of children from that racial or ethnic group or groups enrolled in the LEA.

“*Risk ratio*” is a calculation performed by dividing the risk of a particular outcome for children in one racial or ethnic group within an LEA by the risk for children in all other racial and ethnic groups within the LEA.

“*Risk ratio threshold*” is a threshold, determined by the state, over which disproportionality based on race or ethnicity is significant under subrule 41.646(1).

41.647(2) Significant disproportionality determinations. In determining whether significant disproportionality exists in the state or LEA under subrule 41.646(1), the state must do all of the following:

a. General. The state must set a:

- (1) Reasonable risk ratio threshold;
- (2) Reasonable minimum cell size;
- (3) Reasonable minimum n-size; and
- (4) Standard for measuring reasonable progress if the state uses the flexibility described in paragraph 41.647(4) “b.”

b. Flexibility. The state may, but is not required to, set the standards set forth in paragraph 41.647(2) “a” at different levels for each of the categories described in paragraphs 41.647(2) “f” and 41.647(2) “g.”

c. Development and review of standards. The standards set forth in paragraph 41.647(2) “a”:

- (1) Must be based on advice from stakeholders, including state advisory panels, as provided under Section 612(a)(21)(D)(iii) of the Act; and
- (2) Are subject to monitoring and enforcement for reasonableness by the Secretary consistent with Section 616 of the Act.

d. Presumption of reasonability. When monitoring for reasonableness under subparagraph 41.647(2) “c”(2), the following are presumptively reasonable:

- (1) A minimum cell size under subparagraph 41.647(2) “a”(2) no greater than ten; and
- (2) A minimum n-size under subparagraph 41.647(2) “a”(3) no greater than 30.

e. Application. The state must apply the risk ratio threshold or thresholds determined in paragraph 41.647(2) “a” to risk ratios or alternate risk ratios, as appropriate, in each category described in paragraphs 41.647(2) “f” and 41.647(2) “g” and the following racial and ethnic groups:

- (1) Hispanic/Latino of any race; and, for individuals who are non-Hispanic/Latino only;
- (2) American Indian or Alaska Native;
- (3) Asian;
- (4) Black or African American;
- (5) Native Hawaiian or Other Pacific Islander;
- (6) White; and
- (7) Two or more races.

f. Calculation of risk ratio: identification. Except as provided in paragraph 41.647(2) “h” and subrule 41.647(3), the state must calculate the risk ratio for each LEA, for each racial and ethnic group in paragraph 41.647(2) “e” with respect to:

- (1) The identification of children ages 3 through 21 as children with disabilities; and
- (2) The identification of children ages 3 through 21 as children with the following impairments:
 1. Intellectual disabilities;
 2. Specific learning disabilities;
 3. Emotional disturbance;
 4. Speech or language impairments;
 5. Other health impairments; and

6. Autism.

g. Calculation of risk ratio: placement and disciplinary removals. Except as provided in paragraph 41.647(2) “h” and subrule 41.647(3), the state must calculate the risk ratio for each LEA, for each racial and ethnic group in paragraph 41.647(2) “e” with respect to the following placements into particular educational settings, including disciplinary removals:

- (1) For children with disabilities ages 6 through 21, inside a regular class less than 40 percent of the day;
 - (2) For children with disabilities ages 6 through 21, inside separate schools and residential facilities, not including homebound or hospital settings, correctional facilities, or private schools;
 - (3) For children with disabilities ages 3 through 21, out-of-school suspensions and expulsions of ten days or fewer;
 - (4) For children with disabilities ages 3 through 21, out-of-school suspensions and expulsions of more than ten days;
 - (5) For children with disabilities ages 3 through 21, in-school suspensions of ten days or fewer;
 - (6) For children with disabilities ages 3 through 21, in-school suspensions of more than ten days;
- and

(7) For children with disabilities ages 3 through 21, disciplinary removals in total, including in-school and out-of-school suspensions, expulsions, removals by school personnel to an interim alternative education setting, and removals by a hearing officer.

h. Alternate risk ratio. The state must calculate an alternate risk ratio with respect to the categories described in paragraphs 41.647(2) “f” and 41.647(2) “g” if the comparison group in the LEA does not meet the minimum cell size or the minimum n-size.

i. Identification as having significant disproportionality. Except as provided in subrule 41.647(4), the state must identify as having significant disproportionality based on race or ethnicity under subrule 41.646(1) any LEA that has a risk ratio or alternate risk ratio for any racial or ethnic group in any of the categories described in paragraphs 41.647(2) “f” and 41.647(2) “g” that exceeds the risk ratio threshold set by the state for that category.

j. Reporting under this subrule to the Secretary. The state must report all risk ratio thresholds, minimum cell sizes, minimum n-sizes, and standards for measuring reasonable progress selected under subparagraphs 41.647(2) “a”(1) through 41.647(2) “a”(4), and the rationales for each, to the U.S. Department of Education at a time and in a manner determined by the Secretary. Rationales for minimum cell sizes and minimum n-sizes not presumptively reasonable under paragraph 41.647(2) “d” must include a detailed explanation of why the numbers chosen are reasonable and how they ensure that the state is appropriately analyzing and identifying LEAs with significant disparities, based on race and ethnicity, in the identification, placement, or discipline of children with disabilities.

41.647(3) Exception. The state is not required to calculate a risk ratio or alternate risk ratio, as outlined in paragraphs 41.647(2) “f,” 41.647(2) “g,” and 41.647(2) “h,” to determine significant disproportionality if:

- a.* The particular racial or ethnic group being analyzed does not meet the minimum cell size or minimum n-size; or
- b.* In calculating the alternate risk ratio under paragraph 41.647(2) “h,” the comparison group in the state does not meet the minimum cell size or minimum n-size.

41.647(4) Flexibility. The state is not required to identify an LEA as having significant disproportionality based on race or ethnicity under subrule 41.646(1) until:

- a.* The LEA has exceeded a risk ratio threshold set by the state for a racial or ethnic group in a category described in paragraphs 41.647(2) “f” and 41.647(2) “g” for up to three prior consecutive years preceding the identification; and
- b.* The LEA has exceeded the risk ratio threshold and has failed to demonstrate reasonable progress, as determined by the state, in lowering the risk ratio or alternate risk ratio for the group and category in each of the two prior consecutive years.

41.647(5) Rule of construction. Nothing in this rule shall be construed to require identification or classification of any child by impairment.

ITEM 17. Amend paragraph **41.1002(1)“f”** as follows:

f. The individual’s complete school record shall be available to the participants at the conference if the record is requested in writing at least ten calendar days before the conference.

ITEM 18. Amend subrule 41.1003(3) as follows:

41.1003(3) Notice. The director of education or designee shall, within five business days after the receipt of the appeal, notify the proper officials with the LEA and the AEA of the filing of the due process complaint and shall request in writing that the proper school officials file with the ~~department~~ assigned administrative law judge all records relevant to the due process complaint if such records are requested by the assigned administrative law judge. The officials shall, within 20 business days after receipt of the request from the administrative law judge, file with the ~~department~~ administrative law judge all records relevant to the decision appealed.

ITEM 19. Rescind and reserve paragraph **41.1003(7)“c.”**

ITEM 20. Adopt the following **new** subrule 41.1014(3):

41.1014(3) Filing of certified administrative record. The department shall file a certified copy of the administrative record within 30 days of receiving the informational copy referred to in subrule 41.1014(2).